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8 **BEFORE THE**
9 **STATE BOARD OF OPTOMETRY**
10 **DEPARTMENT OF CONSUMER AFFAIRS**
11 **STATE OF CALIFORNIA**

11 In the Matter of the Petition to Revoke
12 Probation Against:

Case No. D1-2009-146

13 **ROBERT DAVERN ARMSTRONG**
14 **477 East Colorado Blvd.**
15 **Pasadena, CA 91101**
16 **Optometry Certificate of Registration No.**
17 **4890**

PETITION TO REVOKE PROBATION

Respondent.

17 Complainant alleges:

18 **PARTIES**

19 1. Mona Maggio (Complainant) brings this Petition to Revoke Probation solely in her
20 official capacity as the Executive Officer of the State Board of Optometry, Department of
21 Consumer Affairs.

22 2. On or about September 14, 1967, the State Board of Optometry (Board) issued
23 Optometry Certificate of Registration Number 4890 to Robert Davern Armstrong (Respondent).
24 The Certificate was active at all times relevant herein and will expire on October 31, 2013, unless
25 renewed.

26 3. In a disciplinary action entitled "In the Matter of Accusation Against Robert Davern
27 Armstrong," Case No. CC-2009-146, the Board issued a decision on April 10, 2012, which took
28 effect on May 10, 2012, in which Respondent's Optometry Certificate of Registration was

1 revoked; however, the revocation was stayed and Respondent's Optometry Certificate of
2 Registration was placed on probation for a period of 4 years with certain terms and conditions. A
3 copy of that decision is attached as Exhibit A and is incorporated by reference.

4 JURISDICTION

5 4. This Petition to Revoke Probation is brought before the State Board of Optometry
6 (Board), Department of Consumer Affairs, under the authority of the following laws. All section
7 references are to the Business and Professions Code unless otherwise indicated.

8 STATUTES

9 5. Section 3091 authorizes the Board to discipline licensees by placing them on
10 probation.

11 6. Government Code section 11519 subdivision (b) also authorizes agencies governed
12 by the Administrative Procedure Act to impose probationary terms when the execution of a
13 disciplinary order is stayed.

14 PETITION TO REVOKE PROBATION

15 7. Grounds exist for revoking probation and imposing the order of revocation of
16 Respondent's Optometry Certificate of Registration Number 4890.

17 8. Condition 14 of the Board's April 2012 Decision allows the Board to discipline
18 Respondent for violating his probation conditions.

19 "14. Violation of Probation. If Respondent violates any term of the
20 probation in any respect, the Board, after giving Respondent notice and opportunity to
21 be heard, may revoke probation and carry out the disciplinary order that was stayed.
22 If an accusation or petition to revoke probation is filed against Respondent during
23 probation, the board shall have continuing jurisdiction, and the period of probation
24 shall be extended until the matter is final. No petition for modification of discipline
25 shall be considered while there is an accusation or petition to revoke probation or
26 other discipline pending against Respondent."

27 9. Condition 3 of the Board's April 2012 Decision required Respondent to cooperate
28 with the probation program:

"3. Cooperate with Probation Monitoring Program. Respondent shall
comply with the requirements of the Board's probation monitoring program, and
shall, upon reasonable request, report or personally appear as directed.

Respondent shall claim all certified mail issued by the Board, respond to
all notices of reasonable requests timely, and submit Reports, Identification Update

1 reports or other reports similar in nature, as requested and directed by the Board or its
2 representative.

3 Respondent is encouraged to contact the Board's Probation Program at
4 any time he has a question or concern regarding his terms and conditions of
5 probation.

6 Failure to appear for any scheduled meeting or examination, or cooperate
7 with the requirements of the program, including timely submission of requested
8 information, shall constitute a violation of probation and may result in the filing of an
9 accusation or a petition to revoke probation or both against Respondent's Optometrist
10 license.

11 10. Respondent has violated his probation conditions, as set forth below.

12 FIRST CAUSE TO REVOKE PROBATION

13 (Failure to Submit Quarterly Reports)

14 11. Respondent's probation is subject to revocation because he failed to comply with
15 Probation Condition 2, which requires him to file quarterly reports, as follows:

16 12. Paragraphs 3, 7, 8, and 9 are realleged in and incorporated into this allegation.

17 13. At all times after the effective date of Respondent's probation, Condition 2 stated:

18 "2. Quarterly Reports. Respondent shall file quarterly reports of
19 compliance under penalty of perjury to the probation monitor assigned by the Board.
20 Quarterly report forms will be provided by the Board. Omission or falsification in any
21 manner of any information on these reports shall constitute a violation of probation
22 and shall result in the filing of an accusation or a petition to revoke probation or both
23 against Respondent's optometrist license. Respondent is responsible for contacting
24 the Board to obtain additional forms if needed. Quarterly reports are due for each year
25 of probation throughout the entire length of probation as follows:

26 • For the period covering January 1st through March 31st, reports are
27 to be completed and submitted between April 1st and April 7th.

28 • For the period covering April 1st through June 30th, reports are to be
completed and submitted between July 1st and July 7th.

• For the period covering July 1st through September 30th, reports are
to be completed and submitted between October 1st and October 7th.

• For the period covering October 1st through December 31st, reports
are to be completed and submitted between January 1st and January 7th.

Failure to submit complete and timely reports shall constitute a violation
of probation."

14. Respondent's probation took effect on May 10, 2012.

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1 15. Respondent should have filed reports for the second quarter 2012 by July 7, 2012; for
2 the third quarter 2012 by October 7, 2012; and for the fourth quarter 2012 by January 7, 2013.

3 He has not filed any of these reports.

4 **SECOND CAUSE TO REVOKE PROBATION**

5 **(Failure to Pay Cost Recovery)**

6 16. Respondent's probation is subject to revocation because he failed to comply with
7 Probation Condition 8, which requires him to repay the Board for its prior investigation costs
8 according to a Board-approved payment plan, as follows:

9 17. Paragraphs 3, 7, 8, and 9 are realleged in and incorporated into this allegation.

10 18. At all times after the effective date of Respondent's probation, Condition 8 stated:

11 "8. **Cost Recovery.** Respondent shall pay to the Board a sum not to
12 exceed the costs of the investigation and prosecution of this case. That sum shall be
13 \$5,000 and shall be paid in full directly to the Board, in a Board approved payment
14 plan, within 6 months from the end of the probation term. Cost recovery will not be
15 tolled.

16 If Respondent is unable to submit costs timely, he shall instead submit an explanation
17 of why he is unable to submit these costs in part or in entirety, the date or dates he
18 will be able to submit the costs, and the amount he will be able to pay. Supporting
19 documentation and evidence of why the Respondent is unable to make payments must
20 accompany this submission.

21 Respondent understands that failure to submit costs timely is a violation of probation
22 and submission of evidence demonstrating financial hardship does not preclude the
23 Board from pursuing further disciplinary action. However, Respondent understands
24 that by providing evidence and supporting documentation of financial hardship may
25 delay further disciplinary action.

26 Consideration to financial hardship will not be given should Respondent violate this
27 term and condition, unless an unexpected and unavoidable hardship is established
28 from the date of this order to the date payment is due. The filing of bankruptcy by the
Respondent shall not relieve the Respondent of his responsibility to reimburse the
Board for these costs."

23 19. On or about May 11, 2012, Respondent entered into a payment plan with the Board.
24 The plan required him to make an initial payment of \$121.00 by May 10, 2012 and 41 payments
25 of \$119 payments on the first of each month until he had paid the full cost recovery of \$5,000.

26 20. Respondent made his first payment on May 10, 2012 and his second payment on May
27 30, 2012. But he did not make any further payments, including payments for July through
28 December 2012, or for January and February 2013.

21. Respondent's failure to comply with the payment plan he entered into violates Condition 8.

THIRD CAUSE TO REVOKE PROBATION

(Education Course)

22. Respondent's probation is subject to revocation because he failed to comply with Probation Condition 17, which requires him to select and take an education course, as follows:

23. Paragraphs 3, 7, 8, and 9 are realleged in and incorporated into this allegation.

24. At all times after the effective date of Respondent's probation, Condition 17 stated:

"17. **Education Course.** Within 90 days of the effective date of this decision, and on an annual basis thereafter, respondent shall submit to the board for its prior approval an educational program or course in the areas of diagnosis of eye disease or injury, including retinal tears, which shall not be less than 20 hours per year, for each year of probation. This program shall be in addition to the Continuing Optometric Education requirements for re-licensure, and shall be obtained with all costs being paid by respondent. Following the completion of each course, the board or its designee may administer an examination to test respondent's knowledge of the course. Respondent shall provide written proof of attendance in such course or courses as are approved by the board.

25. Paragraphs 3, 7, 8, and 9 are realleged in and incorporated into this allegation.

26. Respondent's probation took effect on May 10, 2012, which was the effective date of the Board's decision.

27. As of the date of filing of this Petition, which is more than 90 days after the effective date of the Decision, Respondent has not submitted a proposed course to the Board and has not attended or completed such a course.

FOURTH CAUSE TO REVOKE PROBATION

(Failure to Pay Probation Monitoring Costs)

28. Respondent's probation is subject to revocation because he failed to comply with Probation Condition 4, which requires him to regularly pay the Board's probation monitoring costs, as follows:

29. Paragraphs 3, 7, 8, and 9 are realleged in and incorporated into this allegation.

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30. At all times after the effective date of Respondent's probation, Condition 4 stated:

"4. Probation Monitoring Costs. All costs incurred for probation monitoring during the entire probation shall be paid by the Respondent. The monthly cost may be adjusted as expenses are reduced or increased. Respondent's failure to comply with all terms and conditions may also cause this amount to be increased. The fee for probation monitoring shall start at a minimum of \$100 per month. All payments for costs are to be sent directly to the Board of Optometry and must be received by the date or dates specified. (Periods of tolling will not toll the probation monitoring costs incurred.)

If Respondent is unable to submit costs for any month, he shall be required, instead, to submit an explanation of why he is unable to submit the costs, the date or dates he will be able to submit the costs, and the amounts he will be able to pay. Supporting documentation and evidence of why the Respondent is unable to make such payment or payments must accompany this submission.

Respondent understands that failure to submit costs timely is a violation of probation and submission of evidence demonstrating financial hardship does not preclude the Board from pursuing further disciplinary action. However, Respondent understands that by providing evidence and supporting documentation of financial hardship it may delay further disciplinary action.

In addition to any other disciplinary action taken by the Board, an unrestricted license will not be issued at the end of the probationary period and the optometrist license will not be renewed, until such time as all probation monitoring costs have been paid. The filing of bankruptcy by the Respondent shall not relieve the Respondent of his/her responsibility to reimburse the Board for costs incurred."

31. Respondent paid probation monitoring costs for May and June 2012.

32. Respondent did not pay the required probation monitoring costs for the months of July 2012 through December 2012, and January 2013.

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1 PRAYER

2 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
3 and that following the hearing, the State Board of Optometry issue a decision:

- 4 1. Revoking the probation that was granted by the State Board of Optometry in Case
5 No. CC-2009-146 and imposing the disciplinary order that was stayed, thereby revoking
6 Optometry Certificate of Registration No. 4890 issued to Robert Davern Armstrong;
7 2. Revoking or suspending Optometry Certificate of Registration No. 4890, issued to
8 Robert Davern Armstrong;
9 3. Taking such other and further action as deemed necessary and proper.

10
11 DATED: February 12, 2013

12 
13 MONA MAGGIO
14 Executive Officer
15 State Board of Optometry
16 Department of Consumer Affairs
17 State of California
18 Complainant

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Exhibit A

Decision and Order

State Board of Optometry Case No. CC-2009-146

BEFORE THE
STATE BOARD OF OPTOMETRY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

Case No. CC-2009-146

ROBERT DAVERN ARMSTRONG

OAH No. 2011080850

5601 De Soto Avenue

Woodland Hills, CA 91365

Optometry Certificate of Registration No.
4890

Respondent.

DECISION AND ORDER

The attached Stipulated Settlement and Disciplinary Order is hereby adopted by the State Board of Optometry, Department of Consumer Affairs, as its Decision in this matter.

This Decision shall become effective on May 10, 2012.

It is so ORDERED April 10, 2012



FOR THE STATE BOARD OF OPTOMETRY
DEPARTMENT OF CONSUMER AFFAIRS

1 KAMALA D. HARRIS
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8 **BEFORE THE**
9 **STATE BOARD OF OPTOMETRY**
10 **DEPARTMENT OF CONSUMER AFFAIRS**
11 **STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:

13 **ROBERT DAVERN ARMSTRONG**
5601 De Soto Avenue
14 Woodland Hills, CA 91365
Optometry Certificate of Registration No.
4890

15 Respondent.

Case No. CC-2009-146

OAH No. 2011080850
**STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER**

17 IT IS HEREBY STIPULATED AND AGREED by and between the parties to the above-
18 entitled proceedings that the following matters are true:

19 **PARTIES**

20 1. Mona Maggio (Complainant) is the Executive Officer of the State Board of
21 Optometry. She brought this action solely in her official capacity and is represented in this matter
22 by Kamala D. Harris, Attorney General of the State of California, by Geoffrey Ward, Deputy
23 Attorney General.

24 2. Respondent Robert Davern Armstrong (Respondent) is represented in this proceeding
25 by attorney Paul Spackman, Esq., whose address is: Iungerich & Spackman, 28441 Highridge
26 Road, Suite 201, Rolling Hills Estates, CA 90274.

27 3. On or about September 14, 1967, the State Board of Optometry issued Optometry
28 Certificate of Registration No. 4890 to Robert Davern Armstrong (Respondent). The Optometry

1 Certificate of Registration was in full force and effect at all times relevant to the charges brought
2 in Accusation No. CC-2009-146 and will expire on October 31, 2011, unless renewed.

3 JURISDICTION

4 4. Accusation No. CC-2009-146 was filed before the State Board of Optometry (Board),
5 Department of Consumer Affairs, and is currently pending against Respondent. The Accusation
6 and all other statutorily required documents were properly served on Respondent on February 9,
7 2011. Respondent timely filed his Notice of Defense contesting the Accusation. A copy of
8 Accusation No. CC-2009-146 is attached as Exhibit A and incorporated herein by reference.

9 ADVISEMENT AND WAIVERS

10 5. Respondent has carefully read, fully discussed with counsel, and understands the
11 charges and allegations in Accusation No. CC-2009-146. Respondent has also carefully read,
12 fully discussed with counsel, and understands the effects of this Stipulated Settlement and
13 Disciplinary Order.

14 6. Respondent is fully aware of his legal rights in this matter, including the right to a
15 hearing on the charges and allegations in the Accusation; the right to be represented by counsel at
16 his own expense; the right to confront and cross-examine the witnesses against him; the right to
17 present evidence and to testify on his own behalf; the right to the issuance of subpoenas to compel
18 the attendance of witnesses and the production of documents; the right to reconsideration and
19 court review of an adverse decision; and all other rights accorded by the California
20 Administrative Procedure Act and other applicable laws.

21 7. Respondent voluntarily, knowingly, and intelligently waives and gives up each and
22 every right set forth above.

23 CULPABILITY

24 8. Respondent understands and agrees that the charges and allegations in Accusation
25 No. CC-2009-146, if proven at a hearing, would constitute cause for imposing discipline upon his
26 Optometry Certificate of Registration.

27 9. For the purpose of resolving the Accusation without the expense and uncertainty of
28 further proceedings, Respondent agrees that, at a hearing, Complainant could establish a factual

1 basis for the charges and allegations in the Second Cause for Discipline in the Accusation (failure
2 to refer a patient to an appropriate physician), and that Respondent hereby gives up his right to
3 contest those charges and allegations.

4 10. Respondent agrees that his Optometry Certificate of Registration is subject to
5 discipline and he agrees to be bound by the Board's probationary terms as set forth in the

6 Disciplinary Order below.

7 CIRCUMSTANCES IN MITIGATION

8 11. Respondent Robert Davern Armstrong has been a practicing optometrist since 1967
9 and has never been the subject of any prior disciplinary action.

10 CONTINGENCY

11 12. This stipulation shall be subject to approval by the State Board of Optometry.
12 Respondent understands and agrees that counsel for Complainant and the staff of the State Board
13 of Optometry may communicate directly with the Board regarding this stipulation and settlement,
14 without notice to or participation by Respondent or his counsel. By signing the stipulation,
15 Respondent understands and agrees that he may not withdraw his agreement or seek to rescind the
16 stipulation prior to the time the Board considers and acts upon it. If the Board fails to adopt this
17 stipulation as its Decision and Order, the Stipulated Settlement and Disciplinary Order shall be of
18 no force or effect, except for this paragraph, it shall be inadmissible in any legal action between
19 the parties, and the Board shall not be disqualified from further action by having considered this
20 matter.

21 13. The parties understand and agree that facsimile copies of this Stipulated Settlement
22 and Disciplinary Order, including facsimile signatures thereto, shall have the same force and
23 effect as the originals.

24 14. This Stipulated Settlement and Disciplinary Order is intended by the parties to be an
25 integrated writing representing the complete, final, and exclusive embodiment of their agreement.
26 It supersedes any and all prior or contemporaneous agreements, understandings, discussions,
27 negotiations, and commitments (written or oral). This Stipulated Settlement and Disciplinary
28

Order may not be altered, amended, modified, supplemented, or otherwise changed except by a writing executed by an authorized representative of each of the parties.

15. In consideration of the foregoing admissions and stipulations, the parties agree that the Board may, without further notice or formal proceeding, issue and enter the following Disciplinary Order:

DISCIPLINARY ORDER

IT IS HEREBY ORDERED that Optometry Certificate of Registration No. 4890 issued to Respondent Robert Davern Armstrong (Respondent) is revoked. However, the revocation is stayed and Respondent is placed on probation for four years on the following terms and conditions:

1. **Obey All Laws.** Respondent shall obey all federal, state and local laws, and all rules governing the practice of optometry in California.

2. **Quarterly Reports.** Respondent shall file quarterly reports of compliance under penalty of perjury to the probation monitor assigned by the Board. Quarterly report forms will be provided by the Board. Omission or falsification in any manner of any information on these reports shall constitute a violation of probation and shall result in the filing of an accusation or a petition to revoke probation or both against Respondent's optometrist license. Respondent is responsible for contacting the Board to obtain additional forms if needed. Quarterly reports are due for each year of probation throughout the entire length of probation as follows:

- For the period covering January 1st through March 31st, reports are to be completed and submitted between April 1st and April 7th.
- For the period covering April 1st through June 30th, reports are to be completed and submitted between July 1st and July 7th.
- For the period covering July 1st through September 30th, reports are to be completed and submitted between October 1st and October 7th.
- For the period covering October 1st through December 31st, reports are to be completed and submitted between January 1st and January 7th.

Failure to submit complete and timely reports shall constitute a violation of probation.

1 **3. Cooperate with Probation Monitoring Program.** Respondent shall comply with
2 the requirements of the Board's probation monitoring program, and shall, upon reasonable
3 request, report or personally appear as directed.

4 Respondent shall claim all certified mail issued by the Board, respond to all notices of
5 reasonable requests timely, and submit Reports, Identification Update reports or other reports

6 similar in nature, as requested and directed by the Board or its representative.

7 Respondent is encouraged to contact the Board's Probation Program at any time he has a
8 question or concern regarding his terms and conditions of probation.

9 Failure to appear for any scheduled meeting or examination, or cooperate with the
10 requirements of the program, including timely submission of requested information, shall
11 constitute a violation of probation and may result in the filing of an accusation or a petition to
12 revoke probation or both against Respondent's Optometrist license.

13 **4. Probation Monitoring Costs.** All costs incurred for probation monitoring during the
14 entire probation shall be paid by the Respondent. The monthly cost may be adjusted as expenses
15 are reduced or increased. Respondent's failure to comply with all terms and conditions may also
16 cause this amount to be increased. The fee for probation monitoring shall start at a minimum of
17 \$100 per month. All payments for costs are to be sent directly to the Board of Optometry and
18 must be received by the date or dates specified. (Periods of tolling will not toll the probation
19 monitoring costs incurred.)

20 If Respondent is unable to submit costs for any month, he shall be required, instead, to
21 submit an explanation of why he is unable to submit the costs, the date or dates he will be able to
22 submit the costs, and the amounts he will be able to pay. Supporting documentation and evidence
23 of why the Respondent is unable to make such payment or payments must accompany this
24 submission.

25 Respondent understands that failure to submit costs timely is a violation of probation and
26 submission of evidence demonstrating financial hardship does not preclude the Board from
27 pursuing further disciplinary action. However, Respondent understands that by providing
28 evidence and supporting documentation of financial hardship it may delay further disciplinary

1 action.

2 In addition to any other disciplinary action taken by the Board, an unrestricted license will
3 not be issued at the end of the probationary period and the optometrist license will not be
4 renewed, until such time as all probation monitoring costs have been paid. The filing of
5 bankruptcy by the Respondent shall not relieve the Respondent of his/her responsibility to
6 reimburse the Board for costs incurred.

7 **5. Function as an Optometrist.** Respondent shall function as an optometrist for a
8 minimum of 40 hours per month for the entire term of his/her probation period.

9 **6. Notice to Employer.** Respondent shall provide to the Board the names, physical
10 addresses, mailing addresses, and telephone number of all employers and supervisors and shall
11 give specific, written consent that the licensee authorizes the Board and the employers and
12 supervisors to communicate regarding the licensee's work status, performance, and monitoring.
13 Monitoring includes, but is not limited to, any violation of any probationary term and condition.

14 Respondent shall be required to inform his employer, and each subsequent employer during
15 the probation period, of the discipline imposed by this decision by providing his supervisor and
16 director and all subsequent supervisors and directors with a copy of the decision and order, and
17 the Accusation in this matter prior to the beginning of or returning to employment or within 14
18 days from each change in a supervisor or director.

19 The Respondent must ensure that the Board receives written confirmation from the
20 employer that he is aware of the Discipline, on forms to be provided to the Respondent. The
21 Respondent must ensure that all reports completed by the employer are submitted from the
22 employer directly to the Board. Respondent is responsible for contacting the Board to obtain
23 additional forms if needed.

24 **7. Changes of Employment and Residence.** Respondent shall notify the Board, and
25 appointed probation monitor in writing, of any and all changes of employment, location, and
26 address within 14 days of such change. This includes but is not limited to applying for
27 employment, termination or resignation from employment, change in employment status, and
28 change in supervisors, administrators or directors.

Respondent shall also notify his/her probation monitor and the Board in writing of any changes of residence or mailing address within 14 days. P.O. Boxes are accepted for mailing purposes; however the Respondent must also provide his/her physical residence address as well.

8. **Cost Recovery.** Respondent shall pay to the Board a sum not to exceed the costs of the investigation and prosecution of this case. That sum shall be \$ 5,000 and shall be paid in full directly to the Board, in a Board approved payment plan, within 6 months from the end of the probation term. Cost recovery will not be tolled.

If Respondent is unable to submit costs timely, he shall instead submit an explanation of why he is unable to submit these costs in part or in entirety, the date or dates he will be able to submit the costs, and the amount he will be able to pay. Supporting documentation and evidence of why the Respondent is unable to make payments must accompany this submission.

Respondent understands that failure to submit costs timely is a violation of probation and submission of evidence demonstrating financial hardship does not preclude the Board from pursuing further disciplinary action. However, Respondent understands that by providing evidence and supporting documentation of financial hardship may delay further disciplinary action.

Consideration to financial hardship will not be given should Respondent violate this term and condition, unless an unexpected and unavoidable hardship is established from the date of this order to the date payment is due. The filing of bankruptcy by the Respondent shall not relieve the Respondent of his responsibility to reimburse the Board for these costs.

9. **Take and Pass California Laws and Rule Examination.** Within 60 days of the effective date of this Decision, or within some other time as prescribed in writing by the Board, Respondent shall take and pass the California Laws and Regulations Examination (CLRE), a multiple choice examination. If Respondent fails this examination, Respondent must take and pass a re-examination as approved by the Board. The waiting period between repeat examinations shall be at six month intervals until success is achieved. Respondent shall pay the established examination fees. If Respondent has not taken and passed the examination within twelve months from the effective date of this decision, Respondent shall be considered to be in violation of

1 probation. Respondent shall not practice optometry until Respondent has passed the required
2 examination and has been so notified by the Board in writing.

3 10. **Maintain Current License.** Respondent shall maintain a current, active and valid
4 license for the length of the probation period. Failure to pay all fees and meet continuing
5 education requirements prior to his license expiration date shall constitute a violation of
6 probation.

7 11. **Tolling For Out-of-State Residency or Practice.** Periods of residency or practice
8 outside California, whether the periods of residency or practice are temporary or permanent, will
9 toll the probation period but will not toll the cost recovery requirement, nor the probation
10 monitoring costs incurred. Travel outside of California for more than 30 days must be reported to
11 the Board in writing prior to departure. Respondent shall notify the Board, in writing, within 14
12 days, upon his/her return to California and prior to the commencement of any employment where
13 representation as an optometrist is/was provided.

14 12. **License Surrender.** During Respondent's term of probation, if he ceases practicing
15 due to retirement, health reasons, or is otherwise unable to satisfy any condition of probation,
16 Respondent may surrender his license to the Board. The Board reserves the right to evaluate
17 Respondent's request and exercise its discretion whether to grant the request, or to take any other
18 action deemed appropriate and reasonable under the circumstances, without further hearing. Upon
19 formal acceptance of the tendered license and wall certificate, Respondent will no longer be
20 subject to the conditions of probation. All costs incurred (i.e., Cost Recovery and Probation
21 Monitoring) are due upon reinstatement.

22 Surrender of Respondent's license shall be considered a Disciplinary Action and shall
23 become a part of Respondent's license history with the Board.

24 13. **Completion of Probation.** Upon successful completion of probation, Respondent's
25 certificate will be fully restored.

26 14. **Violation of Probation.** If Respondent violates any term of the probation in any
27 respect, the Board, after giving Respondent notice and opportunity to be heard, may revoke
28 probation and carry out the disciplinary order that was stayed. If an accusation or petition to

1 revoke probation is filed against Respondent during probation, the board shall have continuing
2 jurisdiction, and the period of probation shall be extended until the matter is final. No petition for
3 modification of discipline shall be considered while there is an accusation or petition to revoke
4 probation or other discipline pending against Respondent.

5 15. **Completion of Probation.** Upon successful completion of probation, Respondent's
6 license shall be fully restored.

7 16. **Direct Supervision.** During the period of probation, Respondent shall be under the
8 direct supervision of a person holding a current and valid un-restricted Board-issued license.
9 "Direct supervision" means assigned to an optometrist who is on duty and immediately available
10 in the assigned patient area. The Board shall be informed in writing of and approve the level of
11 supervision provided to the Respondent while he is functioning as a licensed optometrist. The
12 appropriate level of supervision must be approved by the Board prior to engaging in practice.

13 Supervisor Quarterly Reports of Performance are due for each year of probation and the
14 entire length of probation from each employer, as follows:

- 15 • For the period covering January 1st through March 31st, reports are to be completed
16 and submitted between April 1st and April 7th.
- 17 • For the period covering April 1st through June 30th, reports are to be completed and
18 submitted between July 1st and July 7th,
- 19 • For the period covering July 1st through September 30th, reports are to be
20 completed and submitted between October 1st and October 7th.
- 21 • For the period covering October 1st through December 31st, reports are to be
22 completed and submitted between January 1st and January 7th.

23 Respondent is ultimately responsible for ensuring his/her supervisor submits complete and
24 timely reports. Failure to ensure each supervisor submits complete and timely reports shall
25 constitute a violation of probation.

26 17. **Education Course.** Within 90 days of the effective date of this decision, and on an
27 annual basis thereafter, respondent shall submit to the board for its prior approval an educational
28 program or course in the areas of diagnosis of eye disease or injury, including retinal tears, which

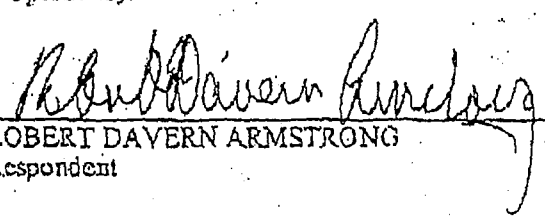
1 shall not be less than 20 hours per year, for each year of probation. This program shall be in
2 addition to the Continuing Optometric Education requirements for re-licensure, and shall be
3 obtained with all costs being paid by respondent. Following the completion of each course, the
4 board or its designee may administer an examination to test respondent's knowledge of the
5 course. Respondent shall provide written proof of attendance in such course or courses as are
6 approved by the board.

ACCEPTANCE

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10 I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully
11 discussed it with my attorney, Paul Spackman, Esq.. I understand the stipulation and the effect it
12 will have on my Optometry Certificate of Registration. I enter into this Stipulated Settlement and
13 Disciplinary Order voluntarily, knowingly, and intelligently, and agree to be bound by the
14 Decision and Order of the State Board of Optometry.

DATED:

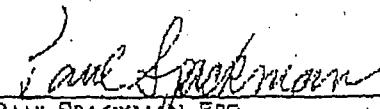
Feb 17, 2012


ROBERT DAVERN ARMSTRONG
Respondent

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19 I have read and fully discussed with Respondent Robert Davern Armstrong the terms and
20 conditions and other matters contained in the above Stipulated Settlement and Disciplinary Order.
21 I approve its form and content.

DATED:

February 16, 2012


PAUL SPACKMAN, ESQ.
Attorney for Respondent

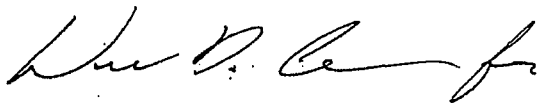
1 ENDORSEMENT

2 The foregoing Stipulated Settlement and Disciplinary Order is hereby respectfully submitted for
3 consideration by the State Board of Optometry of the Department of Consumer Affairs.

4 Dated: 2/17/12

5 Respectfully submitted,

6 KAMALA D. HARRIS
Attorney General of California
7 KAREN B. CHAPPELLE
Supervising Deputy Attorney General

8 

9 GEOFFREY WARD
10 Deputy Attorney General
11 Attorneys for Complainant

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Exhibit A

Accusation No. CC-2009-146

1 KAMALA D. HARRIS
Attorney General of California
2 KAREN B. CHAPPELLE
Supervising Deputy Attorney General
3 GEOFFREY WARD
Deputy Attorney General
4 State Bar No. 246437
300 So. Spring Street, Suite 1702
5 Los Angeles, CA 90013
Telephone: (213) 897-2660
6 Facsimile: (213) 897-2804
E-mail: Geoffrey.Ward@doj.ca.gov
7 Attorneys for Complainant

8 BEFORE THE
9 STATE BOARD OF OPTOMETRY
DEPARTMENT OF CONSUMER AFFAIRS
10 STATE OF CALIFORNIA

11 In the Matter of the Accusation Against:

Case No. CC-2009-146

12 ROBERT DAVERN ARMSTRONG

13 5601 De Soto Avenue
14 Woodland Hills, CA 91365

ACCUSATION

15 Optometry Certificate of Registration No.
16 4890

Respondent.

18 Complainant alleges:

19 PARTIES

20 1. Mona Maggio ("Complainant") brings this Accusation solely in her official capacity
21 as the Executive Officer of the State Board of Optometry, Department of Consumer Affairs.

22 2. On or about September 14, 1967, the State Board of Optometry issued Optometry
23 Certificate of Registration Number 4890 to Robert Davern Armstrong (Respondent). The
24 Optometry Certificate of Registration was in full force and effect at all times relevant to the
25 charges brought herein and will expire on October 31, 2011, unless renewed.

26 ///

27 ///

28 ///

JURISDICTION

3. This Accusation is brought before the State Board of Optometry ("Board"), Department of Consumer Affairs, under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.

4. Section 3024 of the Code provides authority for the Board to revoke or suspend an optometrist's certificate of registration:

"The board may grant or refuse to grant certificates of registration as provided in this chapter and may revoke or suspend the certificate of registration of any optometrist for any of the causes specified in this chapter. It shall have the power to administer oaths and to take testimony in the exercise of these functions."

5. Section 3090 of the Code also provides authority for the Board to take disciplinary action:

"Except as otherwise provided by law, the board may take action against all persons guilty of violating this chapter or any of the regulations adopted by the board. The board shall enforce and administer this article as to licenseholders, and the board shall have all the powers granted in this chapter for these purposes, including, but not limited to, investigating complaints from the public, other licensees, health care facilities, other licensing agencies, or any other source suggesting that an optometrist may be guilty of violating this chapter or any of the regulations adopted by the board."

STATUTES

6. Section 3110 of the Code in relevant part provides grounds for discipline:

"The board may take action against any licensee who is charged with unprofessional conduct, and may deny an application for a license if the applicant has committed unprofessional conduct. In addition to other provisions of this article, unprofessional conduct includes, but is not limited to, the following:

(a) Violating or attempting to violate, directly or indirectly assisting in or abetting the violation of, or conspiring to violate any provision of this chapter or any of the rules and regulations adopted by the board pursuant to this chapter.

(b) Gross negligence.

....
(y) Failure to refer a patient to an appropriate physician in either of the following circumstances:

(1) Where an examination of the eyes indicates a substantial likelihood of any pathology that requires the attention of that physician.

(2) As required by subdivision (c) of Section 3041."

7. Section 3041.1 of the Code provides that optometrists' standard of care for certain diagnostic and treatment practices is the same as for other medical professionals: "[w]ith respect to the practices set forth in subdivisions (b), (d), and (e) of Section 3041, optometrists diagnosing or treating eye disease shall be held to the same standard of care to which physicians and surgeons and osteopathic physicians and surgeons are held."

8. Section 3041 subdivision (d) of the Code provides:

"(d) In any case where this chapter requires that an optometrist consult with an ophthalmologist, the optometrist shall maintain a written record in the patient's file of the information provided to the ophthalmologist, the ophthalmologist's response, and any other relevant information. Upon the consulting ophthalmologist's request and with the patient's consent, the optometrist shall furnish a copy of the record to the ophthalmologist."

9. Gross negligence is defined as "a lack of even scant care or an extreme departure from the ordinary standard of conduct." *See, e.g. Kearl v. Board of Medical Quality Assurance* (1986) 189 Cal.App.3d 1040, 1052 (physician's license suspended for gross negligence and incompetence).

COST RECOVERY

10. Section 125.3 of the Code provides, in pertinent part, that the Board may request the administrative law judge to direct a licensee found to have committed a violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.

FIRST CAUSE FOR DISCIPLINE

(Gross Negligence)

11. Respondent is subject to disciplinary action under section 3110 subdivision (b) of the Code because he failed to provide even scant care or engaged in an extreme departure from the ordinary standard of care by failing to properly examine, diagnose, and recommend treatment for a patient with symptoms of a detached retina. The circumstances are as follows:

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12. On or about June 20, 2008, patient W. P.¹ visited Respondent at the optometry department at Kaiser Permanente Woodland Hills. The patient had symptoms of a detached retina in his left eye. Respondent misdiagnosed the potentially detached retina, believing it to be a cataract. He referred the patient to an ophthalmologist, who the patient was scheduled to see on July 3, 2008, almost two weeks later.

~~13. After visiting Respondent, the patient's vision in his left eye rapidly deteriorated.~~
The patient went for a second opinion on June 30, 2008. At that appointment, an ophthalmologist diagnosed the patient as having a detached retina in the left eye, and scheduled immediate surgery. After multiple surgeries, the patient's vision remained permanently reduced in that eye.

14. Respondent's failure to properly diagnose, examine, and recommend treatment for patient W. P. was gross negligence under section 3110 of the Code, because he failed to provide scant care to the patient and his conduct was an extreme departure from the ordinary standard of care that an optometrist would have provided.

SECOND CAUSE FOR DISCIPLINE

(Failing to Refer Patient to a Physician)

15. By committing the acts set forth in paragraphs 11-14, above, Respondent is subject to discipline under Section 3110 subdivision (y) of the Code because he failed to immediately refer patient W. P. to a physician when an examination of W. P.'s left eye should have indicated a substantial likelihood of a detached retina, a pathology requiring the immediate attention of a physician.

PRAYER

WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the State Board of Optometry issue a decision:

1. Revoking, suspending Optometry Certificate of Registration Number 4890, issued to Robert Davern Armstrong;

¹ The patient's name will be abbreviated in this accusation to preserve patient privacy.

2. Ordering Robert Davern Armstrong to pay the State Board of Optometry the
reasonable costs of the investigation and enforcement of this case, pursuant to Business and
Professions Code section 125.3; and

3. Taking such other and further action as deemed necessary and proper.

DATED: January 31, 2011

Mona Maggio
MONA MAGGIO
Executive Officer
State Board of Optometry
Department of Consumer Affairs
State of California
Complainant

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RECEIVED
JAN 31 2011
5:00 PM
STATE BOARD OF OPTOMETRY
1500 CALIFORNIA STREET
SACRAMENTO, CA 95833